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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/328,565	06/09/1999	KEVIN PALARDY	935-017	6975

7590 11/07/2002
WARD & OLIVO
708 THIRD AVENUE
NEW YORK, NY 10017

EXAMINER

RUDY, ANDREW J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 11/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/328,565

Applicant(s)

PALARDY, KEVIN

Examiner

Andrew Joseph Rudy

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 June 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. Claims 40-59 are pending. The Applicant has canceled claims 1-39. The 19 August 2002 amendment has been reviewed. Further inquiry as to the appropriate date of the Stock boy reference is required. As is, the rejection relying upon it is withdrawn.

Specification

2. The specification is objected to as the terms SKU and SPIFF from page 30, lines 4, 11 have not been defined. Correction is required. Applicant's attempt to correct "SKU" is noted. No new matter may be entered.

3. The amendment filed 19 August 2002 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: At page 12, line 18, after SKUs the term "(Stock Keeping Units)" is objected to. Applicant has not indicated that the proposed term is well known in the art. Otherwise, alternative terms may reasonably be deemed to meet the definition of SKU. As such, the Examiner is not clear as to the specification's original meaning. Applicant is required to cancel the new matter in the reply to this Office Action.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the features from claims 40-59, e.g. the claim limitations from claims 40 and 54 are not illustrated, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 40-59 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 40, line 4 the term “single” does not have support in the specification, e.g. page 15, lines 3-18. The phrase “at least two times per week” from claim

47 has no clear support in the specification, e.g., page 8, lines 6-23, thru page 9, lines 1-10, or page 16, lines 5-10. From claim 55, lines 3, 5, 7 and 9, the phrases “means for inputting employee data”, “means for inputting transaction data”, “means for creating” and “means for generating” are not clear. Support for claim 58 is not clear. As is, the claims are not clear.

Claim Rejections - 35 USC § 103

7. Claims 40-59, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Green et al., US 6,356,875 in view of Adams, US 5,255,182.

Green discloses a method comprising inputting employee data and transaction data, e.g. column 2, into a server 16 and computers 12, 20, 24, 26 (or a single computer, col. 4, line 64) that stores data therein and calculating and recalculating employee labor costs (may be on a daily basis) to determine compensation packages via the productivity/pay system 10. The incentive may be no more than working extra hours or completing extra units or function of work. The business labor rules may be no more than the allowable amount of time and/or units/function an employee is allowed to work each day/week/month.

Adams discloses a point of sale (POS) system where data is uploaded into a computer for analysis.

To provide the data to be uploaded into a computer for analysis for Green would be obvious to one of ordinary skill in the art in view of Adams. Doing so would use well known computer system technologies to transfer and store data for Green.

Applicant's inventive concept of using an apparent well known mechanism to compensate an employee for productivity and using a computer system to implement it is not deemed novel. There are literally thousands of different employee compensation packages that are prevail throughout industry, e.g. paying an employee via an hourly wage or paying an employee via a commission. To substitute one package for another using the computer systems of Green, as modified by Adams, would have been obvious to one of ordinary skill in the art.

8. Further pertinent references of interest:

Owens et al., US 6,092,055, discloses a real time billing system.

Goodwin, III, US 6,044,358, discloses a computer system that compares data.

Manos, US 5,884,283, discloses a system for recalculating data.

Apgar, IV, US 5,680,305, discloses analysis of a database system.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3627

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Joseph Rudy whose telephone number is 703-308-7808. The examiner can normally be reached on Tuesday thru Friday, 7:30 a.m until 6 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Robert Olszewski can be reached on (703) 308-5183. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

October 26, 2002



Richard Chilcot
Patent Examiner
Technology Center 226

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